

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

ELGRET LORENZO BURDEX,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. CIV-07-758-D
	)	
SHANE WYATT, et al.,	)	
	)	
Defendants.	)	

ORDER

Plaintiff, a state prisoner who appears *pro se*, brought this action pursuant to 42 U.S.C. §1983. He also filed a Motion for Leave to Proceed *In Forma Pauperis*, as authorized by 28 U.S.C. §1915(a). In accordance with 28 U.S.C. §636(b)(1)(B), the matter was referred to United States Magistrate Judge Gary M. Purcell for initial proceedings.

On July 10, 2007, the Magistrate Judge entered an order directing the plaintiff to cure certain deficiencies in his *in forma pauperis* application. After several extensions of time were authorized, the plaintiff ultimately filed a proper motion, which was granted by Order of August 13, 2007 [Doc. No. 18]. In the Order, the plaintiff was directed to pay an initial partial filing fee of \$20.01<sup>1</sup> no later than September 10, 2007. Plaintiff was advised that, thereafter, he would be required to make monthly payments in an amount equivalent to 20 percent of the preceding month's income credited to his prison account until the full \$350.00 filing fee was paid. The Magistrate Judge also expressly advised the plaintiff that his failure to pay the initial \$20.01 partial filing fee by September 10, 2007, or to show cause in writing for nonpayment of that amount, could result in

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<sup>1</sup>*In the interim, the plaintiff had made a \$5.00 payment, and that amount was deducted from the total amount required, leaving a balance of \$20.01.*

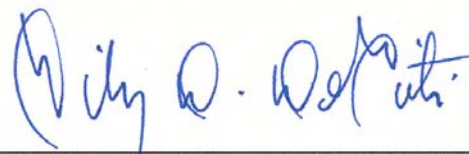
the dismissal of this action without prejudice to its refiling.

On September 14, 2007 the Magistrate Judge filed a Report and Recommendation [Doc. No. 20], noting that the plaintiff did not pay the initial partial filing fee by the scheduled deadline; the plaintiff also did not attempt to show cause for his failure to do so. Therefore, the Magistrate Judge recommended that this action be dismissed without prejudice to its refiling.

In the Report and Recommendation, the Magistrate Judge advised the plaintiff of his right to file an objection to the Report and Recommendation, and he set an October 4, 2007 deadline for doing so. He further expressly advised the plaintiff that his failure to timely object to the Report and Recommendation would constitute a waiver of the right to appellate review of the factual findings and legal conclusions set forth therein.

The deadline has expired, and the plaintiff has not filed an objection or sought an extension of time in which to do so. Accordingly, the Report and Recommendation [Doc. No. 20] is adopted as though fully set forth herein. This action is dismissed without prejudice to the filing of a new action.

IT IS SO ORDERED this 10<sup>th</sup> day of October, 2007.



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TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE

